SHIM CHENG PANG

v.

PUBLIC PROSECUTOR

HIGH COURT, TAWAU
TUAN IAN H.C. CHIN J.
[CRIMINAL APPEAL NO. T(41) - 2 OF 1994]
16 MARCH 1994

CRIMINAL LAW & PROCEDURE: Conviction under Regulation 5 of the Lembaga Padi dan Beras Negara (Licensing of Wholesale and Retail Dealers) Regulations 1973 - Appeal against conviction - Whether Court can substitute the conviction under Regulation 5 for one under Regulation 3 - Whether Regulation 3 creates any offence - Whether words in Regulation 3 read with s. 27 of the Lembaga Padi dan Beras Negara Act 1971 are clear and distinct.

The accused was in possession of an expired licence to sell rice and sacks of rice were found in his shop displayed for sale. The accused was duly convicted under Regulation 5 and sentenced to a fine of RM3,000. The accused appealed against his conviction and sentence and argued that Regulation 3 even when read with s. 27 of the Act does not create any offence. The accused argued that the words in Regulation 3 read with s. 27 of the Act were not clear and distinct and further contended that in any event he did not fall foul of Regulation 3 as he was in possession of a licence at the relevant time, *albeit* an expired licence.

Held:

[1] Regulation 3 is plain enough - no one can sell rice by wholesale or retail unless he is licensed to do so. Anyone who sells rice without a licence, or with an expired licence, would be contravening or would be failing to comply with this Regulation and the person falls to be dealt with under s. 27 of the Act.

[2] To permit the construction as contended by the accused would be to make the Regulation and the Act a pointless piece of legislation because it has the effect of allowing anyone in possession of an expired licence to sell rice when the Regulation and Act seeks to prescribe that only people with valid licenses are allowed to sell rice. Such a construction cannot be allowed.

[3] In so far as the appeal against sentence is concerned, learned Counsel had not been able to show the Court how the learned Magistrate had erred in imposing a fine of RM3,000 when the maximum fine permitted by the Act is RM15,000 for a first offence.

[Appeal dismissed save that the conviction of the accused is under Regulation 3 read with s. 27 of the Act].

Cases referred to:

A-G & Board of Education v. West Riding of Yorksire, Exp Greenside [1907] AC 29 ***(refd)***

R v. Mansel Jones [1889] 23 QBD 29 ***(refd)***

Smith Kline & French Laboratories Ltd. v. Salim (Malaysia) Sdn. Bhd. [1989] 2 MLJ 380 ***(foll)***

Legislation referred to:

Lembaga Padi dan Beras Negara Act 1971, ss. 27(1), 32

Lembaga Padi dan Beras Negara (Licensing of Wholesale and Retail Dealers) Regulations 1973, Regulations 3, 5

Other sources referred to:

Odgers' on Construction, 4th Edn., p. 326

For the appellant - Peter Kuok; M/s. Peter Kuok & Co.
For the respondent - Zahir Hussein Ahmad Shah, DPP

JUDGMENT

Ian H.C. Chin J:

Shim Cheng Pang ("the appellant") was on 12 June 1989 convicted by the learned Magistrate of the following amended charge, *viz*:

> That you, on 23 May 1986 at about 3.00 p.m. at a sundry shop known as Sim Hua Seng Mui Kee, 75, Jln Chester, did offer for sale 9 gunny sack of rice weighing 875.4 kilogrammes but on that day, the licence issued by the Lembaga Padi dan Beras Negara to sell rice has already expired and thereby you have committed an offence under Regulation 5 of the Lembaga Padi dan Beras Negara (Licensing of Wholesale and Retail Dealers) Regulations 1973 and punishable under s. 27(1) of the Lembaga Padi dan Beras Negara Act 1971.

The facts are briefly that the accused was in possesssion of an expired licence to sell rice and sacks of rice were found in his shop displayed for sale. Since this appeal revolves around the interpretation of the various statutory sections and regulations, I will reproduce them. The relevant regulations are Regulations 3 and 5 of the Lembaga Padi Dan Beras Negara (Licensing

of Wholesale and Retail Dealers) Regulations 1973, ("Regulations"), which are made under s. 32 of the Lembaga Padi Dan Beras Negara Act 1971 ("the Act"), *viz*:

> 3. No person other than the Lembaga shall sell rice by wholesale or retail unless he is licensed to do so by the Lembaga.
>
> .....
>
> 5(1) Any licence issued or renewed shall be in the forms prescribed under the Schedule and may be subject to such terms and conditions as may be imposed by the Lembaga.
>
> (2) Without prejudice to the provisions of paragraph (1) of this regulation the following provisions shall apply with respect to every licence issued or renewed -
>
> (a) each licence shall be valid for such period as may be specified therein;
> (b) there shall be paid to the Lembaga an annual fee of two hundred ringgit for a licence issued or renewed to a dealer by wholesale and an annual fee of twenty ringgit for a licence issued or renewed to a dealer by retail;
> (c) where a licence is issued during the second half of the year (July-December) the fee payable shall be fifty ringgit for a wholesale licence and five ringgit for a retail licence;
> (d) all licences issued or renewed shall be valid for such period as may be specified therein;
> (e) all licences issued or renewed shall not be transferable.

As for the Act, s. 27 is of relevance and it reads:

> 27. General penalty.
>
> (1) Any person other than a body corporate but including a director or officer of a body corporate who commits an offence under or who fails to comply with, any of the provisions of this Act or of any regulation made thereunder in respect of which no penalty is expressedly provided for shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding fifteen thousand ringgit or to both such imprisonment and fine and for a second or subsequent offence to imprisonment for a term not exceeding five years or to a fine not exceeding twenty-five thousand ringgit and for a second or subsequent offence, to a fine not exceeding fifty thousand ringgit.

Mr. Peter Kuok, Counsel for the appellant, argued that neither Regulation 3 nor 5, not even when they are read together with s. 27 of the Act, creates any offence. This position was taken after I had in the course of the hearing interjected by asking learned Counsel to confine his argument to whether Regulation 3 creates any offence. I had indicated during the hearing that Regulation 5 does not create any offence but that the Court may substitute the conviction under Regulation 3 for which the appellant was originally charged before the learned Magistrate amended the charge. Mr. Peter Kuok aruged that the words in Regulation 3 read with s. 27 of the Act are not clear and distinct and referred to **Odgers' on Construction**, 4th edn., at p. 326 where the following is cited, *viz*:

> Blackburn J. said (1): "When the legislature imposes a penalty the words imposing it must be clear and distinct."

I accept the proposition of law cited by learned Counsel and which I have just quoted. This means that the Court has simply to ascertain the meaning of Regulation 3 read with s. 27 of the Act as they stand. See the judgment of Lord Loreburn in *A-G & Board of Education v. West Riding of Yorksire, Ex p Greenside* [1907] AC 29. If the words of a statute are plain, you give effect to them. See *R v. Mansel Jones* [1889] 23 QBD 29. As far as possible, a statute should not be read resulting in it being a pointless piece of legislaton. See *Smith Kline & French Laboratories Ltd v. Salim (Malaysia) Sdn Bhd* [1989] 2 MLJ 380, at p. 382.

Regulation 3 is plain enough - no one can sell rice by wholesale or retail unless he is licensed to do so. Anyone who sells rice without a licence, or with an expired licence, would be contravening or would be failing to comply with this Regulation and the person falls to be dealt with under s. 27 of the Act. It was also argued that the appellant was at that time in possession of a licence even though it had at the relevant time expired and therefore, argued learned Counsel, the appellant did not fall foul of Regulation 3. To permit such a construction as argued by learned Counsel would be to make the Regulation and the Act a pointless piece of legislation because it has the effect of allowing anyone in possession of an expired licence to sell rice when the Regulation and Act seeks to prescribe that only people with valid licences are allowed to sell rice. Such a construction cannot be allowed. See *Smith Kline & French Laboratories Ltd v Salim (Malaysia) Sdn Bhd, supra.*

The appeal against sentence was not seriously pursued. In any event, learned Counsel had not been able to show the Court how the learned Magistrate had erred in imposing a fine of RM3,000 when the maximum fine permitted by the Act is RM15,000 for a first offence. The appeal is therefore dismissed save that the conviction of the accused is under Regulation 3 read with s. 27 of the Act. I note that there is a stay of execution of the sentence granted by the learned Magistrate. The stay is lifted and the appellant has 7 days in which to pay the fine of RM3,000, failing which he shall serve a term of imprisonment of 3 months. The proceeds of the sale of the seized rice are to go to the Lembaga Padi dan Beras Negara.

YAN WING LEE

v.

PUBLIC PROSECUTOR

HIGH COURT, TAIPING
DATO' HAJI ABDUL MALIK BIN HAJI ISHAK JC
[CRIMINAL APPEAL NO. 52-70-92 (IPOH 42(52)-54-89)]
17 MAY 1993

CRIMINAL LAW & PROCEDURE: Firearms (Increased Penalties) Act 1971 - Section 4 - Robbery, exhibition of revolver at time of commission of robbery and likelihood of putting person in fear of death or hurt.

APPEAL: Petition of Appeal - Whether appellant could raise/rely on grounds not itemised in petition of appeal - Section 307(vi) Criminal Procedure Code - Appellate Court - Whether appellate Court entitled to disregard grounds not itemised in petition of appeal.

EVIDENCE: Break in chain of evidence - Evidence of prosecution witnesses - Break in chain of evidence in regard to movements of revolver - Handling of revolver from the time it was seized by police detectice from appellant till it was handed over to investigation officer - To consider whole of evidence.

EVIDENCE: Dock Evidence - Unsworn evidence of appellant from dock - Defence story - Duty of Court to consider statement from dock.

EVIDENCE: First Information Report - Police report lodged after commencement of investigation - Whether report admissible.

EVIDENCE: Evidence of witnesses - Existence of discrepancies - Whether sufficient to destroy credibility - Question of weight - Effect of evidence which are too consistent - Whether trifling or material discrepancies.

This was an appeal against the decision of the Sessions Judge, Sessions Court, Taiping who convicted the appellant on a charge under s. 4 of the Firearms (Increased Penalties) Act 1971. The appellant was sentenced to imprisonment for life and ordered to receive six strokes of the rattan. Hence, this appeal.

Held:

[1] The prosecution have proved beyond reasonable doubt that there was robbery, exhibition of the revolver at the time of the commission of the robbery and the likelihood of putting PW3,